

FEDERAL HOUSING FINANCE BOARD

BOARD OF DIRECTORS MEETING

OPEN SESSION

Washington, D.C.

Tuesday, March 27, 2007

ANDERSON COURT REPORTING
706 Duke Street, Suite 100
Alexandria, VA 22314
Phone (703) 519-7180 Fax (703) 519-7190

1 PARTICIPANTS:

2 Board Members

3 RONALD A. ROSENFELD, Chairman

4 ALPHONSO JACKSON, HUD Secretary

5 GEOFFREY BACINO, Director

6 ALICIA R. CASTANEDA, Director

7 ALLAN I. MENDELOWITZ, Director

8 SHELIA WILLIS, Secretary

9 Also Present

10 NEIL R. CROWLEY

11 STEPHEN M. CROSS

12 THOMAS JENNINGS

13 DUANE CREEL

14 CHRISTIE A. SCIACCIA

15 J.P. GREEN

16 DARIS MEEKS

17 CHUCK JONES

18 JONATHAN LINDLEY

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1 P R O C E E D I N G S

2 (10:00 a.m.)

3 CHAIRMAN ROSENFELD: Good morning,
4 everyone. I call this meeting of the Board of
5 Directors of the Federal Housing Finance Board to
6 order. Today we will have an open session,
7 followed immediately by a closed session, where
8 the Board will receive updates of examination and
9 supervisory findings.

10 We now need to vote to approve closing
11 the latter portion of today's meeting, as required
12 by the Sunshine Act and Finance Board Regulations.
13 And since the closed portion of today's meeting
14 will contain sensitive and confidential bank
15 examination information, I would ask for a motion
16 to seal the transcript of this portion of the
17 meeting. Director Bacino.

18 DIRECTOR BACINO: Mr. Chairman, I move
19 to close the portion of today's meeting in which
20 we will receive updates of examination and
21 supervisory findings, and further, that we
22 determine that the record and transcript of this

1 closed portion of the meeting be kept
2 confidential.

3 CHAIRMAN ROSENFELD: Thank you for the
4 motion. Is there a discussion of the motion, any
5 discussion? Do I have a second?

6 DIRECTOR CASTANEDA: Second.

7 CHAIRMAN ROSENFELD: Thank you, Director
8 Castaneda. Would the Secretary please call the
9 roll?

10 MS. WILLIS: On the item before the
11 Board, Director Bacino, how do you vote?

12 DIRECTOR BACINO: Yes.

13 MS. WILLIS: Director Castaneda?

14 DIRECTOR CASTANEDA: Yes.

15 MS. WILLIS: Director Mendelowitz?

16 DIRECTOR MENDELOWITZ: Yes.

17 MS. WILLIS: Secretary Jackson?

18 SECRETARY JACKSON: Yes.

19 MS. WILLIS: Chairman Rosenfeld?

20 CHAIRMAN ROSENFELD: Yes; the motion is
21 carried and the subsequent portion of our meeting
22 will be closed and the transcript will remain

1 closed and confidential. Thank you. Now let's
2 turn to the public portion of today's meeting.
3 The first item is a final rule establishing
4 procedures for the selection of appointed
5 directors to the Boards of the Federal Home Loan
6 Bank. Who will be making the staff presentation?
7 Tom.

8 MR. JENNINGS: I will, Chairman. Good
9 morning, everybody. On January 18, this Board
10 adopted an interim final rule that established a
11 process by which the Finance Board would use to
12 fill appointed director vacancies. The Board also
13 established a 30 day comment period for the public
14 to comment on this rule. The Finance Board
15 received eight comments on the interim rule, three
16 from banks, three from trade associations, one
17 from a member, and one from a community interest
18 group. All were supportive of the rule, but
19 various changes were suggested. Today, staff is
20 presenting to you for consideration a final rule
21 which takes into consideration those comments that
22 were received during the comment period. Briefly,

1 the interim rule establishes the following;
2 whenever an appointed director vacancy occurs at a
3 bank, that bank must submit to the Finance Board a
4 list of nominees equal to two times the number of
5 vacancies at the bank.

6 The list must contain only those persons
7 that the bank's board of directors has deemed both
8 eligible and well qualified. Information about
9 those qualifications and the eligibility is
10 presented to the Finance Board for its
11 consideration on a Finance Board form.

12 From among that group, the Finance Board
13 may, in its discretion, fill some or all of the
14 appointed director vacancies. If it does not fill
15 all of the vacancies, the Finance Board may, in
16 its discretion, request additional nominees from
17 that bank.

18 Any person may ask a bank to consider
19 that person for a vacant position, and any
20 interested party may submit to the bank a request
21 to consider someone else for that appointed
22 director vacancy.

1 The interim rule establishes an October
2 1 deadline as the annual date by which the banks
3 must submit the names and forms to fill appointed
4 vacancies that will occur when terms expire the
5 following December 31. In addition, if any bank
6 loses an appointed director before the director's
7 term expired, the bank will have a reasonable
8 period of time thereafter in which to submit the
9 names to the Finance Board. Because vacancies
10 currently exist at all the banks, for this year
11 only, the banks must submit the required
12 information for all those vacancies on or before
13 this March 31.

14 Based on the comments that we received,
15 staff recommends two changes to these rules;
16 first, we propose that the Board modify the two
17 nominee requirement to allow, but not require, any
18 bank to submit any number of names up to two times
19 the number of vacancies. But any bank would be
20 required to submit only the names of those
21 nominees equal to the number of vacancies that
22 currently exist.

1 Second, we propose that the Board modify
2 the March 31 deadline to allow any bank to request
3 an extension of that time in which to submit its
4 information for the existing vacancies. By March
5 31 of this year, the banks will have had a little
6 over two months to seek qualified persons, act
7 through its board of directors to select nominees,
8 and then submit those nominations to the Finance
9 Board.

10 Although some banks have already
11 completed these actions, some may need additional
12 time both to process -- because the process is new
13 to them and because of the number of vacancies
14 that currently exist. Because this rule is a
15 procedural rule and because the current March 31
16 deadline is imminent, we recommend that the final
17 rule become effective immediately upon publication
18 in the Federal Register.

19 CHAIRMAN ROSENFELD: Thank you.

20 SECRETARY JACKSON: Can we go back over
21 that first? I didn't quite understand.

22 MR. JENNINGS: The number of nominees to

1 be submitted, currently we require that the number
2 equal two times the number of vacancies. We are
3 allowing the banks, in their discretion, to submit
4 up to two times, but we're requiring that they
5 submit only one name per vacancy, so there's a
6 reduction in the number of requirements to one.

7 SECRETARY JACKSON: I got it, thanks.

8 CHAIRMAN ROSENFELD: Any other comments?

9 DIRECTOR BACINO: I have one question
10 for you, Tom. The extension that we are looking
11 at doing would be, I hate to bring up this agency
12 in terms of the April 15 date we have coming up,
13 would it be similar to the IRS type extension,
14 where the first one would be automatic?

15 MR. CROWLEY: If I may, I think the
16 expectation is that the bank asking for an
17 extension would have to tell us why they need it
18 and they would have to tell us when they expected
19 to get the names in to us.

20 DIRECTOR BACINO: Okay.

21 MR. CROWLEY: But if they have reasons
22 that appear reasonable, we would grant that, and I

1 believe the rule allows the director of the
2 Office of Supervision to grant that extension.
3 We've already gotten nominees in from three of the
4 banks, and I know others are coming in this week.
5 I don't expect there to be a lot of requests for
6 extensions, but there may be one or two.

7 DIRECTOR CASTANEDA: But the extension
8 is not going to be for an unlimited period of time,
9 it has to be --

10 MR. CROWLEY: No --

11 DIRECTOR CASTANEDA: -- within reason.

12 MR. CROWLEY: Right, yes, and that's why
13 the rule requires them to tell us when they will
14 have them in, and if they say the end of the year,
15 that's clearly going to be too long, if they say
16 three or four weeks, I think that's very
17 reasonable.

18 DIRECTOR BACINO: One of the questions,
19 and since this is kind of a one time event, and
20 again, a lot of vacancies to fill, I'm going to
21 assume we're not going to have this type of
22 request for extension next year. They kind of

1 know what the deadline is now.

2 MR. CROWLEY: The interim rule had the
3 deadline of March 31, and it's the March 31
4 deadline that is allowed to be extended, not the
5 October deadline.

6 DIRECTOR BACINO: Okay. So we probably
7 won't be seeing this next year because everybody
8 will be --

9 MR. CROWLEY: No, the rule doesn't
10 contemplate extensions for the October deadline.

11 DIRECTOR BACINO: Okay.

12 CHAIRMAN ROSENFELD: If there's nothing
13 else, I will accept the motion to approve the rule
14 and allow staff to make their changes to the rule;
15 motion.

16 DIRECTOR CASTANEDA: I do.

17 CHAIRMAN ROSENFELD: Do I have a second?

18 SECRETARY JACKSON: Second.

19 CHAIRMAN ROSENFELD: Jackson; will the
20 Secretary please call the roll?

21 MS. WILLIS: On the item before the
22 Board, Director Bacino, how do you vote?

1 DIRECTOR BACINO: Yes.

2 MS. WILLIS: Director Castaneda?

3 DIRECTOR CASTANEDA: Yes.

4 MS. WILLIS: Director Mendelowitz?

5 DIRECTOR MENDELOWITZ: Yes.

6 MS. WILLIS: Secretary Jackson?

7 SECRETARY JACKSON: Yes.

8 MS. WILLIS: Chairman Rosenfeld?

9 CHAIRMAN ROSENFELD: Yes; the motion is
10 adopted. The second item is a proposed rule that
11 would establish the permissible financial interest
12 that may be held by an appointed director. The
13 proposal also include provisions relating to
14 acceptable contractual relationships between an
15 appointed director and a member of the bank. Who
16 will be making that presentation?

17 MR. CROWLEY: I'll be doing that, Mr.
18 Chairman.

19 CHAIRMAN ROSENFELD: Okay.

20 MR. CROWLEY: This proposed rule is
21 related to the interim rule that you just -- the
22 final rule that you just adopted. As you're

1 aware, the Bank Act says that any appointed
2 director cannot have shares of a member, nor
3 may an appointed director serve as an officer or
4 director of a member.

5 With the banks getting more involved in
6 the appointment process at the early stage, it's
7 become apparent that there's a need to have some
8 additional guidance as to what financial interests
9 are and are not permissible.

10 In fact, shortly after this agency came
11 into existence, we did have some rules that
12 specified the types of financial interests that
13 were permissible, such as interest in mutual
14 funds, even if mutual fund owned financial
15 institution stock, as well as diversified holding
16 companies, which term referred to holding
17 companies where 50 percent or less of the holding
18 companies net worth and capital -- net worth and
19 earnings were attributable to something other than
20 the bank or savings loans.

21 So what we've tried to do here is put
22 together a proposed rule that gives the bank some

1 more guidance as to what the individuals can have
2 so that the banks can answer these questions in
3 the field rather than having them come in to us in
4 the first instance. And we have attempted to
5 build on the old rules, as well as add some
6 provisions that deal with issues that have come to
7 our attention recently. So the proposed rule
8 would specify a variety of types of investment
9 vehicles, investment accounts, and other
10 relationships that we think should be permissible
11 and would be consistent with the statute.

12 Briefly, it's broken into four or five
13 categories. The first of those is what we call
14 investment vehicles, and that is intended to pick
15 up mutual funds, limited partnerships, things of
16 that nature.

17 The rule provides that so long as it's a
18 legally recognized entity that owns the shares of
19 the member, and the appointed director owns an
20 interest in the entity, but has no ability to
21 control the entity, and has no ability to control
22 the investment decisions made by the entity, we

1 would deem that not to be prohibited.

2 The second category relates to certain
3 types of investment accounts. It has come to our
4 attention in recent weeks that there are some
5 folks who have investments in things called
6 managed accounts, which are similar to mutual
7 funds in that the client does not control what is
8 in the investment portfolio. They differ from
9 mutual funds in that the client actually owns the
10 securities in his or her own name. We have tried
11 to capture in this second element of the rule
12 those types of accounts which, as a practical
13 matter, we do not believe raise conflict of
14 interest issues for the appointed director. And
15 we've tried to build into it certain safeguards
16 such as requiring that the account be managed by a
17 registered investment advisor that's registered
18 under the SEC, that the client pay a fee for the
19 advisory services, that it's all one package and
20 the investments are made pursuant to that, the
21 investment advisor has complete discretion to buy
22 and sell the securities in the portfolio, and that

1 the appointed director cannot be affiliated with
2 the investment advisor and cannot have any control
3 over the selection of securities that go into the
4 account.

5 Under all of those circumstances, we
6 think that the types of accounts that are similar
7 to managed accounts would be functionally
8 comparable or equivalent to the mutual fund
9 situation, which Congress has indicated is okay.

10 The third item relates to holding
11 companies, and this builds on one of the
12 provisions in the prior rule that we used to have.
13 As you know, most large financial institutions are
14 owned by holding companies, so the member does not
15 issue its stock directly to the public, the
16 holding company does.

17 And what we tried to do is recognize
18 that some holding companies have members which are
19 the predominant part of their business, but other
20 holding companies have members which are a very
21 minor part of their business. And an investment
22 in a holding company whose depository institution

1 is de minimus, if you will, really shouldn't be
2 barred by the conflict provisions. And what we've
3 tried to do here is to say that debt or equity
4 securities issued by a holding company that
5 controls one or more members of the bank are not
6 going to be subject to the prohibition so long as
7 the assets of the member or members constitutes
8 less than 25 percent of the assets of the holding
9 company.

10 That's similar to what we had in our old
11 rules relating to diversified holding company, and
12 we think that the focus on percent of assets is a
13 straight forward and workable measure to determine
14 whether or not the securities -- the holding
15 company is, in effect, functionally identical to
16 the member or not.

17 The fourth category we have is loans and
18 deposits, and that, too, is in our prior rule, and
19 that, too, is in our current direct form
20 instructions, which say that if you receive a loan
21 or have a deposit with a member, and it's in the
22 ordinary course of business and there are no

1 preferential terms, that that is not a problem.

2 The final area relates to contractual
3 relationships. We sometimes have people who are
4 attorneys, consultants, auditors, who have done
5 business with members, and the question is whether
6 that business income that they get is a financial
7 interest in the member. And what we've tried to
8 do is build in a safe harbor, so to speak, that
9 says if, in fact, the money that you receive from
10 your business with all of the members of your bank
11 is less than ten percent of your adjusted gross
12 income, meaning 90 percent of your income comes
13 from other sources, we will not deem that to be a
14 prohibited financial interest. Anything above
15 that is not absolutely barred, but you do need to
16 disclose any, both above and below the ten
17 percent, you need to disclose it to us and to the
18 bank, and we will deal with those on a case by
19 case basis, as we have in the past.

20 With respect to contractual
21 relationships, it's very difficult to draft a rule
22 that would cover all of these kinds of

1 circumstances. They are fact driven, and I think
2 the approach of having them come in and resolve
3 one by one is the most workable approach there.

4 The rule also has an attribution
5 provision which says that debt or equity
6 securities owned by the spouse or minor children
7 of an appointed director are attributed to the
8 director for purposes of applying any of these
9 tests.

10 Now, recognizing that we don't know all
11 that there is about managed accounts and things
12 such as that, we have asked for comments on all of
13 these specific areas. With respect to the holding
14 companies, as well, the reg text speaks in terms
15 of permissible investments in the holding
16 companies, but we're asking for comments on
17 extending the same rationale, in other words, is
18 the depository institution more or less than 25
19 percent of the holding companies assets, apply
20 that same test in determining whether it's okay
21 for an individual to be an officer or a director of
22 a holding company. We're going to -- we're

1 recommending that this come out for proposal for a
2 45 day comment period, and I'm happy to answer any
3 questions that you might have about the proposal.

4 CHAIRMAN ROSENFELD: Thank you, Neil.
5 Do any of the Board members have questions or a
6 comment?

7 DIRECTOR CASTANEDA: I would like to
8 make a statement, Mr. Chairman. First, I would
9 like to say that I think Neil, Tom, and OGC staff
10 have done a good job in getting these into a form
11 that we can put out as a proposal in a very short
12 period of time, so thank you very much.

13 Second, as a former banker with
14 experience setting up new types of accounts and
15 arrangements for clients, I think it's important
16 to update our rules to reflect new realities,
17 particularly given our new appointed director
18 nomination process.

19 To recruit the most qualified home loan
20 bank directors, I think we are trying to clarify
21 that certain additional interest may be
22 permissible while ensuring that disclosure

1 requirements remain adequate.

2 In the comment period, I will be
3 especially interested to hear whether we have
4 gotten the balance right. I will also be
5 interested in hearing peoples' views on how these
6 proposed tests fit with other tests, including
7 those under the SEC of regulations for related
8 party contracts and family attribution rules, for
9 example. Thank you.

10 CHAIRMAN ROSENFELD: Anymore comments?
11 I'm sorry, Jeff.

12 DIRECTOR BACINO: One quick thing, if
13 you would remind us, Chairman. I mean I agree
14 with Director Castaneda, I think we have to
15 recognize the changing face of the economy, and
16 also recognize that I think our major goal, or our
17 single goal is to ensure that nobody can benefit
18 unfairly from being a director and being outside.

19 I've talked to a couple of the banks
20 lately, some of them have said they've had some
21 concerns with this or some of the folks that they
22 had talked to had some concerns with this, so I

1 would encourage the banks to comment, the trade
2 groups to comment.

3 And I would kind of close by telling you
4 a story about when I was nominated to a previous
5 appointment. The ethics officer there called me
6 and said, I notice that your wife has an account
7 at Fidelity, and I said, yeah, and he said, does
8 she have a controlling interest in Fidelity, and
9 my comment was, if she had a controlling interest
10 in Fidelity, I would have no interest in being on
11 this board, but thank you.

12 I think we need to keep in sight what we
13 want to try to get out of the equation. I think
14 you guys did a good job in a short period of time,
15 as well.

16 DIRECTOR CASTANEDA: Precisely.

17 CHAIRMAN ROSENFELD: Thank you for
18 revealing such intimate details.

19 DIRECTOR CASTANEDA: Now we know, right.

20 CHAIRMAN ROSENFELD: If there's nothing
21 else, I would -- the motion to approve the
22 publication of the proposed rule and allow the

1 staff to make technical and conforming changes to the
2 rule.

3 Do I have a motion?

4 SECRETARY JACKSON: Approved.

5 CHAIRMAN ROSENFELD: Thank you,
6 Secretary Jackson. Do I have a second?

7 DIRECTOR CASTANEDA: Second.

8 CHAIRMAN ROSENFELD: Okay. Thank you,
9 Director Castaneda. Would the Secretary please
10 call the roll?

11 MS. WILLIS: On the item before the
12 Board, Director Bacino, how do you vote?

13 DIRECTOR BACINO: Yes.

14 MS. WILLIS: Director Castaneda?

15 DIRECTOR CASTANEDA: Yes.

16 MS. WILLIS: Director Mendelowitz?

17 DIRECTOR MENDELOWITZ: Yes.

18 MS. WILLIS: Secretary Jackson?

19 SECRETARY JACKSON: Yes.

20 MS. WILLIS: Chairman Rosenfeld?

21 CHAIRMAN ROSENFELD: Yes; the motion is
22 adopted. As a result of the two Board actions

1 taken today, the governance at the banks will be
2 enhanced by creating a selection process and
3 ethical standards that will be conducive to
4 attracting high qualified candidates for appointed
5 directorships at the Federal Home Loan Banks.

6 We have one other item before we
7 adjourn. Christie Sciacca, who has served with
8 distinction as the Deputy Director for the Office of
9 Supervision since June of 2002, has decided to
10 retire after 31 years of federal service. He
11 began his federal career in the U.S. Air Force in
12 1964 and then joined the FDIC in 1969 as a bank
13 examiner.

14 Christie spent the next 24 years in
15 progressively more responsible positions at the
16 FDIC. He's an individual of the highest integrity
17 and honor whose leadership and advice has made
18 lasting and important contributions to the Finance
19 Board and to the Federal Home Loan Banks. I want
20 to thank him for his superior professional
21 contributions and wish him success and happiness
22 in the future. Do any of the other Board members

1 wish to comment; Allan?

2 DIRECTOR MENDELOWITZ: I just want to
3 say again what I said, at the little party we had for
4 you, Christie, which was I always slept better at
5 night knowing you were on the case. You'll be
6 greatly missed and I really appreciate all of the
7 good work that you did.

8 DIRECTOR CASTANEDA: Christie, thank you
9 very much for everything you have done. I have
10 been here now three years and I can assure you you
11 make my job easier. I'm going to miss our talks
12 about all different issues. Thank you, and good
13 luck.

14 DIRECTOR BACINO: And I would just say
15 that, as the newest member, I haven't had a chance
16 to work with you as long as some of my colleagues,
17 but in the time I've been here, you've been great
18 at explaining situations, laying out scenarios,
19 you know, not afraid to pull any punches, which I
20 appreciate. Although I do have to mention that
21 first John Kennedy and now you leaving shortly
22 after I got here, I am starting to take it a

1 little personal. We wish you well, and thanks
2 very much for everything you did.

3 SECRETARY JACKSON: As I have not been
4 an office, I haven't had a chance to work with
5 you directly, but I do wish you the best. But I
6 will not be anywhere 31 years.

7 MR. SCIACCIA: My office is coming
8 vacant.

9 CHAIRMAN ROSENFELD: For the benefit of
10 Secretary Jackson and those in the audience, I
11 will tell you that we're, obviously, very
12 disappointed to have Christie leave us, but in a
13 last ditch effort to have him stay, I offered him
14 the other day to rename the fourth floor The
15 Christie A. Sciacca Floor. But as some of you
16 know, I kind of pride myself in never giving up,
17 so here's my last shot; Christie, I'll name the
18 third floor and the fourth floor The Christie A.
19 Sciacca Floor.

20 DIRECTOR CASTANEDA: Good.

21 CHAIRMAN ROSENFELD: This ends the open
22 session of the meeting. We convene in three

1 minutes.

2 (Whereupon, the PROCEEDINGS were
3 adjourned.)

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